IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.695 OF 2006
AND
CRIMINAL WRIT PETITION NO.696 OF 2006

DSS Mobile Communications Ltd.& ors. ... Petitioners in both the Petitions.

V/s.

M/s.Indtek Finance and Holdings Pvt. Ltd. & Anr. ... Respondents in both the Petitions.

Mr.Shirish Gupte, Senior Advocate with Mr.R.R. Mishra, for the Petitioners.

Mr.Kumar Tolani,i/b. Nankani & Asst.for Respondent No.1.
Mr. A.S. Shitole, A.P.P. for the State.

CORAM : A.S. OKA, J.
DATE : AUGUST 29, 2006.

P.C. :

1. On the last date the submissions of the learned Senior Counsel appearing for the Petitioners were fully heard.

2. The Petitioners are accused in the two complaints filed by the first Respondent under Section 138 of the Negotiable Instruments Act, 1881. On the two complaints filed by the first Respondent, the learned Magistrate issued process. The Petitioners filed Revision Applications before the Sessions Court for challenging the orders issuing process. The Revision Applications have been dismissed by the learned Additional Sessions Judge.

3. The learned Senior Counsel appearing for the Petitioners submitted that the Canara Bank has issued confirmation letters recording that the cheques which are subject matters of the complaints filed by the first Respondent have not been issued to the Petitioners. He pointed out that even before notice dated 13th August 1999 was issued by the first Respondent on the basis of which the complaints were filed by the first Respondent, a private complaint was filed by the Petitioners against the first Respondent for offences punishable under Sections 465, 467, 468, 471 read with 120 B of the Indian Penal Code. He submitted that process was issued on the said complaint. He, therefore, submitted that process could not have been issued on the complaints filed by the first Respondent in as much as the complaints are based on the cheques which were never issued by the Petitioners.

4. I have considered the submissions. For the purposes of ascertaining whether a case is made out for issuing process on a complaint under Section 138 of the Negotiable Instruments Act, 1981, the learned Magistrate is required to read the complaint as a whole and find out whether ingrediants of the offence are made out. In the present case, on plain reading of the complaints, ingrediants of the offence under Section 138 are clearly made out. What has been argued before this Court constitutes defence of the present Petitioners to the complaints. Considering

the presumption under Section 118 and Section 139 of the said Act, no fault can be found with the order issuing process. It is for the Petitioners to establish their defence at the time of trial.

5. Hence, no case is made out for interference. Petitions are rejected. It is made clear that all contentions of the parties on the merit of the complaint are expressly kept open.

JUDGE